

	Link to Final Agency Decision
	7-1800-19744-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Family Child Care License of Barbara Alex	FINDINGS OF FACT, CONCLUSIONS, RECOMMENDATION AND MEMORANDUM
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This matter was heard by Administrative Law Judge (ALJ) Richard C. Luis at the Hennepin County Human Services and Public Health Department Office in Minneapolis on August 14, 2008. Michael Q. Lynch, Assistant Hennepin County Attorney, represented the Hennepin County Human Services and Public Health Department ("Local Agency") and the Minnesota Department of Human Services ("Department").

Barbara Alex appeared on her own behalf, without counsel.

The hearing record closed at the conclusion of the proceeding on August 14, 2008.

STATEMENT OF ISSUE

Whether reasonable cause exists to continue the temporary immediate suspension of the family child care license of Barbara Alex, pending any final licensing sanction, for her use of alcohol that was apparent during the hours children were in her care on June 10, 2008?

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Barbara Alex (Licensee) has been a licensed family child care operator since 1990. She holds a Class A license, which allows her to care for up to ten children, no more than three of which can be infants or toddlers, no more than two of which can be infants.¹

¹ Testimony of Kelli Mullett.

2. Sometime during the mid-afternoon of June 10, 2008, while at least three children were in her care, the Licensee began drinking a half bottle of rum. When the grandmother of one of the daycare children arrived later to pick up the child, the grandmother concluded, from her observations, that the Licensee had been drinking.²

3. Sometime later that afternoon, another of Ms. Alex's daycare children was picked up by her mother. The mother called the Minneapolis Police Department to report that the Licensee appeared to be drunk at the time the caller picked up her child at the Licensee's residence. The caller also reported that two other children were there when she picked up her daughter, and that Ms. Alex had indicated that another person had earlier accused her of being drunk.³

4. Shortly after 5:00 p.m., a Minneapolis police officer responded to the report that the Licensee was drunk while she was providing daycare services. Upon arrival at the Licensee's residence, the officer observed an "odor of alcoholic beverage coming from her breath". He observed also that Ms. Alex had slurred speech, poor balance, and swayed from side to side as the officer was speaking to her. No daycare children were in Ms. Alex's care at that hour. The officer administered a breath test to the Licensee, and the test indicated a blood alcohol content of .203.⁴

5. At the hearing, Ms. Alex admitted that she had consumed alcohol during hours that daycare children were present at her residence on June 10, 2008.⁵

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction to consider this matter under Minn. Stat. §§ 14.50 and 245A.07.

2. The Department gave proper and timely notice of the hearing, and has complied with all procedural requirements.

3. Under Minnesota law, if a "license holder's actions or failure to comply with applicable law or rule...pose an imminent risk of harm to the health, safety or rights of persons served by the program, the commissioner shall act immediately to temporarily suspend the license."⁶ The burden of proof in this matter is on the Department to demonstrate that "reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses...an imminent risk of harm to the health, safety, or rights of persons served by the program."⁷

² Testimony of Licensee; testimony of Nan Morris.

³ Exhibits 3, 4, and 5.

⁴ Exhibit 5.

⁵ Testimony of Licensee.

⁶ Minn. Stat. § 245A.07, subd. 2.

⁷ Minn. Stat. § 245A.07, subd. 2a.

4. The Department has demonstrated reasonable cause to believe that the Licensee failed to comply with an applicable law or rule, specifically by using alcohol, which use was apparent during the hours children were in her care, in violation of Minn. Rule 9502.0335, Subp. 6.A. The Department has also demonstrated reasonable cause to believe that the Licensee poses imminent risk of harm to the health, safety or rights of children served by her daycare program, within the meaning of Minn. Stat. § 245A.07, subd. 2.

5. It is appropriate for the temporary immediate suspension of the Licensee's family child care license to remain in effect, pending a final Order of the Commissioner for appropriate disciplinary action, if any.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner affirm the temporary immediate suspension of the family child care license of Barbara Alex.

Dated: September 8, 2008.

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Digitally Recorded
No Transcript Prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this report to file Exceptions to the report. At the end of the exceptions period, the record will close. The Commissioner then has 10 working days to issue his final decision. Parties should contact Cal Ludeman, Commissioner of Human Services, P.O. Box 64998, St. Paul, MN 55164-0998, (651) 296-2701, to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Licensee admits to drinking rum during the time children were in care at her facility on June 10, 2008. The fact that she was under stress, from family and financial issues, does not justify the open, admitted rule violation. Ms. Alex offered no defense to rebut the Local Agency/Department's showing of reasonable cause to believe she violated the rule against using alcohol while children were in her care, and that such use was apparent and presented an imminent risk of harm to the children's safety.

R.C.L.